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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Chapter I**

**[EPA-HQ-OPP-2014-0818; FRL-9927-36]**

#### **Proposal to Mitigate Exposure to Bees from Acutely Toxic Pesticide Products; Notice of Availability**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is seeking comment on a proposal to adopt mandatory pesticide label restrictions to protect managed bees under contract pollination services from foliar application of pesticides that are acutely toxic to bees on a contact exposure basis. These label restrictions would prohibit applications of pesticide products, which are acutely toxic to bees, during bloom when bees are known to be present under contract. EPA is also seeking comment on a proposal to rely on efforts made by states and tribes to reduce pesticide exposures through development of locally-based measures, specifically through managed pollinator protection plans. These plans would include local and customizable mitigation measures to address certain scenarios

that can result in exposure to pollinators. EPA intends to monitor the success of these plans in deciding whether further label restrictions are warranted.

**DATES:** Comments must be received on or before *[insert date 30 days after date of publication in the Federal Register]*.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2014-0818, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Michael Goodis, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8157; email address: [goodis.michael@epa.gov](mailto:goodis.michael@epa.gov), or

Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-8578; email address: *echeverria.marietta@epa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you produce an agricultural crop that is attractive to pollinators, if you are a beekeeper, or if you manufacture pesticides. In addition, state and tribal governments may be potentially affected by this action. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Pesticide and Other Agricultural Chemical Manufacturing (NAICS code 325320), e.g.,  
Insecticide and Herbicide Manufacturers
- Apiculture (NAICS code 112910)
- Crop Production (NAICS code 111)
- Regulation of Agricultural Marketing and Commodities (NAICS code 926140), e.g.,  
Pest control programs, agriculture, government

#### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI

information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

### *C. How Can I Get Copies of this Document and Other Related Information?*

A copy of EPA's Proposal to Mitigate Exposure to Bees from Acutely Toxic Pesticide Products is available in the docket under docket identification (ID) number EPA-HQ-OPP-2014-0818.

## **II. What Action is the Agency Taking?**

EPA is proposing mandatory pesticide label restrictions to protect contracted managed bees, *e.g.*, honey bee colonies that are under contract to provide pollination services, from foliar applications of pesticides that are acutely toxic to bees on a contact exposure basis, *i.e.*, those pesticides with an acutely lethal dose to 50% of the bees tested of less than 11 micrograms per bee, based on acute contact toxicity testing. Contracted pollination services result in a heightened risk potential where a large number of honey bee colonies are intentionally placed at a use site, and application of a toxic pesticide in this scenario is nearly certain to result in direct exposure to pollinators. Although the likely outcomes are counter-productive for both the beekeeper (loss of honey bee stock) and the grower (diminished pollination services), many

beekeepers and growers seem not to have found ways to avoid such outcomes. Consequently, EPA believes that strong regulatory measures should be in place for the contracted service scenario to mitigate these potential problems. Therefore, EPA proposes to prohibit the foliar application of acutely toxic products during bloom for sites with bees on-site under contract, unless the application is made in accordance with a government-declared public health response. There would be no other exceptions to the bloom prohibition in the contracted-services scenario. Current neonicotinoid product labels include a 48-hr notification exception to the bloom prohibition. However, as part of this mitigation proposal, the 48-hr notification exception for crops under contracted pollination services during bloom for all neonicotinoid product labels would be removed. These restrictions are expected to reduce the likelihood of acute exposure and mortality to managed bees under contract.

EPA believes that managed bees not under contracted services (and other unmanaged bees) may also be exposed to acutely toxic pesticides when they are within forage range of the application site. While pesticide exposure under this scenario is possible, it is less certain than in situations where a pesticide is applied to a site when large numbers of managed bees have intentionally been positioned at the site for the purposes of providing pollination services. EPA believes that the lower likelihood of exposure for large numbers of managed bees in this scenario may warrant a more flexible approach toward mitigation such as that afforded by state or tribal Managed Pollinator Protection Plans (MP3s). Accordingly, EPA intends to encourage states and tribes to develop MP3s that are effective in reducing the likelihood of bees being present in the treatment area at the time a pesticide application is to be made. EPA would monitor success of these MP3s in mitigating risk to bees from acutely toxic pesticides on an ongoing basis and determine whether additional EPA action is warranted. Therefore, for managed bees not under contract pollination services, EPA is not proposing to require any new

language for pesticide labels. This does not alter EPA's previous requirement for more specific restrictions on neonicotinoid pesticides for which EPA required language to address risks to bees not under contract for pollination services.

EPA is seeking comment on both the approach of label restrictions on products used for bees under contract for pollinator services, and for the approach to rely on state and tribal pollinator protection plans to bees that are not under contract for pollination services.

These actions are consistent with the Presidential directive issued in June 2014 to reduce the effect of factors that have been associated with pollinator declines in general as well as the mandate to engage state and tribal partners in the development of pollinator protection plans. While the proposed mitigation focuses on managed bees, EPA believes that in protecting managed bees, these measures will also protect native solitary and social bees that are in and around treatment areas. The proposed mitigation is based on an acute toxicity threshold and is not intended to supersede more restrictive product-specific use prohibitions. EPA will continue to conduct chemical-specific risk assessments for bees and will consider additional product-specific mitigation as needed in the Office of Pesticide Program's (OPP) registration and registration review programs.

### **III. Areas of Feedback**

EPA is seeking comments on the proposed approach to mitigate exposure to bees from acutely toxic pesticide products under contract and non-contract pollination scenarios. In addition, EPA is specifically seeking comment on several issues described in the policy paper.

#### *A. Label Language for Applications to Sites with Bees Present Under Contracted Services*

EPA is proposing to prohibit the foliar application of acutely toxic products during bloom for sites with bees on-site under contract, unless the application is made in accordance with a government-declared public health response. EPA encourages growers and beekeepers to include provisions in pollination service contracts that take into account the increased likelihood of bee colony exposure and ensure that colonies will be protected and pollination services secured. If EPA receives evidence during the public comment period and/or through outreach at stakeholder meetings that such contract provisions are common or that there are other effective and mutually agreed upon stakeholder (i.e., beekeeper-to-grower) practices indicating that application of acutely toxic pesticides is not of risk concern for bees under contract, then EPA will consider this evidence in determining whether this scenario needs the mitigation indicated in the proposed language. Please comment on any factors that may allow EPA to reconsider the mitigation for this scenario, for example, if risks to bees are addressed through existing, and widely used, contract language.

#### *B. State and Tribal Managed Pollinator Protection Plans*

For sites not under contracted services, EPA believes that pollinator protection plans serve as examples of effective collaboration between stakeholders at the local level that can lead to reduced pesticide exposure and protection of managed bees while maintaining the flexibility needed by growers to protect crops. Based on feedback provided to EPA by state lead agencies that have developed such plans, beekeeper-to-grower communication has been enhanced and fewer bee kill incidents have been reported as a result of the plans. Across these diverse plans, the common element has been effective stakeholder engagement, and anecdotal reports from the stakeholder groups suggest that the plans are effective at increasing communication and cooperation. The development of pollinator protection plans is a voluntary

way for states and tribes to address acute pesticide exposure to pollinators. EPA believes that a key factor for states and tribes to determine the effectiveness of managed pollinator protection plans will be to include mechanisms to measure the effectiveness and a process to periodically review and modify each plan. Please comment on EPA's proposal to address risk to non-contract bees through reliance on state and tribal plans. Also, given the uncertainties with incident data, what kind of measures should be used to demonstrate that state and tribal pollinator protection plans are effective?

### *C. Uncertainties*

EPA recognizes that there are a number of uncertainties that remain regarding chemicals and exposure scenarios that may not fall within the domain of the proposal. EPA is also interested in receiving feedback on these uncertainties, which are described in the proposal.



**Authority: 7 U.S.C. 136a.**

Dated: May 19, 2015.

Jack E. Housenger,

*Director, Office of Pesticide Programs.*

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